

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

April 11, 2003

IN RE:

APPLICATION OF ADVANTAGE CELLULAR
SYSTEMS, INC. TO BE DESIGNATED AS AN
ELIGIBLE TELECOMMUNICATIONS CARRIER

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DOCKET NO.
02-01245

ORDER

This matter came before Chairman Sara Kyle, Director Deborah Taylor Tate and Director Pat Miller of the Tennessee Regulatory Authority (the "Authority"), the voting panel assigned in this docket, at the regularly scheduled Authority Conference held on January 27, 2003, for consideration of the *Application of Advantage Cellular Systems, Inc. To Be Designated As An Eligible Telecommunications Carrier ("Application")* filed on November 21, 2002.

Background

Advantage Cellular Systems, Inc. ("Advantage") is a commercial mobile radio service provider ("CMRS") seeking designation as an Eligible Telecommunications Carrier ("ETC") by the Authority pursuant to 47 U.S.C. §§ 214 and 254. In its *Application*, Advantage asserts that it seeks ETC status for the entire study area of DeKalb Telephone Cooperative, Inc., a rural cooperative telephone company. Advantage maintains that it meets all the necessary requirements for ETC status and therefore is eligible to receive universal service support throughout its service area.

The January 27, 2003 Authority Conference

During the regularly scheduled Authority Conference on January 27, 2003, the panel of Directors assigned to this docket deliberated Advantage's *Application*. Of foremost consideration was the issue of the Authority's jurisdiction. The panel unanimously found that the Authority lacked

jurisdiction over Advantage for ETC designation purposes.¹

This conclusion was implicitly premised on Tenn. Code Ann. § 65-4-104, which provides that:

The Authority has general supervisory and regulatory power, jurisdiction and control over all public utilities and also over their property, property rights, facilities, and franchises, so far as may be necessary for the purpose of carrying out the provisions of this chapter.

For purposes of Tenn. Code Ann. § 65-4-104, the definition of public utilities specifically excludes, with certain exceptions not relevant to this case, "[a]ny individual, partnership, copartnership, association, corporation or joint stock company offering domestic public cellular radio telephone service authorized by the federal communications commission."

The Authority's lack of jurisdiction over CMRS providers implicates 47 U.S.C. § 214(a), which addresses the provision of universal service. Where common carriers seeking universal service support are not subject to a state regulatory commission's jurisdiction, 47 U.S.C. § 214(e)(6) authorizes the Federal Communications Commission ("FCC") to perform the ETC designation.²

¹ This finding is not inconsistent with the Authority's decision in *In re Universal Service Grants Contested Case*, Docket 97-08833, *Interim Order on Phase I of Universal Service*, pp. 53-57 (May 20, 1998), in which the Authority required interstate telecommunications carriers to contribute to the Interstate Universal Service Fund including telecommunications carriers not subject to authority of the TRA. The decision in Docket No. 97-08833 was based primarily on 47 U.S.C. § 254(f) which authorizes states to adopt regulations not inconsistent with the Federal Communications Commission's rules on Universal Service and specifically requires every telecommunications carrier that provides interstate telecommunications services to contribute to the preservation and advancement of universal service in that state. The *Interim Order* was issued prior to the effective date of 47 U.S.C. § 214(e)(6).

² 47 U.S.C. § 214(e)(6) states:

(6) Common carriers not subject to state commission jurisdiction

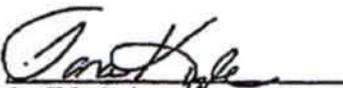
In the case of a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission, the Commission shall upon request designate such a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the Commission consistent with applicable Federal and State law. Upon request and consistent with the public interest, convenience and necessity, the Commission may, with respect to an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated under this paragraph, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the Commission shall find that the designation is in the public interest.

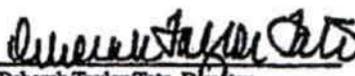
As a matter of "state-federal comity," the FCC requires that carriers seeking ETC designation "first consult with the state commission to give the state commission an opportunity to interpret state law."³ Most carriers that are not subject to a state regulatory commission's jurisdiction seeking ETC designation must provide the FCC "with an affirmative statement from a court of competent jurisdiction or the state commission that it lacks jurisdiction to perform the designation."⁴

The panel noted that the FCC is the appropriate forum for Advantago to pursue ETC status pursuant to 47 U.S.C. § 214(e)(6). This Order shall serve as the above mentioned affirmative statement required by the FCC.

IT IS THEREFORE ORDERED THAT:

The Application of Advantago Cellular Systems, Inc. To Be Designated As An Eligible Telecommunications Carrier is dismissed for lack of subject matter jurisdiction.


Sara Kyle, Chairman


Deborah Taylor Tate, Director


Pat Miller, Director

³ *In the Matter of Federal-State Joint Bd. on Universal Service*, CC Docket No. 96-45, *Tenth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking*, 15 F.C.R. 12203, 12264, § 113 (June 30, 2006).

⁴ *See id.* (The "affirmative statement of the state commission may consist of any duly authorized letter, comment, or state commission order indicating that it lacks jurisdiction to perform designations over a particular carrier.")

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

AT RICHMOND, APRIL 9, 2002

COMMONWEALTH OF VIRGINIA, ex rel.

At the relation of the

STATE CORPORATION COMMISSION

CASE NO. PUC970135

Ex Parte, in re: Implementation
of Requirements of § 214(e) of the
Telecommunications Act of 1996

IN RE:

APPLICATION OF VIRGINIA CELLULAR LLC

CASE NO: PUC010263

For designation as an eligible
telecommunications provider under
47 U.S.C. § 214(e) (2)

ORDER

On September 15, 1997, the State Corporation Commission ("Commission") established the docket in Case No. PUC970135 to consider the requests of local exchange carriers ("LECs") to be designated as eligible telecommunications carriers ("ETC designation") to receive universal service support pursuant to § 214(e) of the Telecommunications Act of 1996, 47 U.S.C. § 251 et seq., ("Act") and associated Federal Regulations.¹ The Commission's exercise of its jurisdiction under § 214(e) (2) of the Act has been to establish a simple and streamlined process for telecommunications carriers to certify their eligibility with a minimum of regulatory burden placed upon each applicant.

¹ 47 C.F.R. § 54.201-207.

All Virginia carriers receiving an ETC designation have merely been required to file an affidavit which, among other matters, certifies that all requirements of the Act for designation are met.²

Until the above-captioned Application was filed in Case No. PUC010263 by Virginia Cellular LLC ("Virginia Cellular" or "Applicant") for ETC designation, these proceedings have been uncontested. This is the first application by a Commercial Mobile Radio Service ("CMRS") carrier for ETC designation.³ Pursuant to the Order Requesting Comments, Objections, or Requests for Hearing, issued by the Commission on January 24, 2002, the Virginia Telecommunications Industry Association ("VTIA") and NTELOS Telephone Inc. ("NTELOS") filed their respective comments and requests for hearing on February 20, 2002. Virginia Cellular filed Reply Comments on March 6, 2002.⁴

The comments of NTELOS and VTIA both contest the sufficiency of the Application and claim Virginia Cellular has

² See Order issued November 21, 1997, in Case No. PUC970135, pp. 2-4 ("November 21, 1997, Order"). Also, the annual certification procedure to comply with 47 C.F.R. §§ 54.313 and 314 has been reduced to filing a form affidavit approved by the Commission in a Preliminary Order, issued August 29, 2001, in Case No. PUC010172.

³ Virginia Cellular is a CMRS carrier as defined in 47 U.S.C. § 153(27) and is authorized as the "A-band" cellular carrier for the Virginia 6 Rural Service Area, serving the counties of Rockingham, Augusta, Nelson, and Highland and the cities of Harrisonburg, Staunton, and Waynesboro.

⁴ On March 4, 2002, Virginia Cellular filed a Consent Motion requesting until March 6, 2002, to file Reply Comments. There being no objection, we now grant the Consent Motion.

failed to demonstrate how the public interest will be served.⁵ NTELOS and VTIA each allude in their comments to other expected applications for ETC designation by wireless and CLEC carriers to follow this case of first impression. For that reason, we are asked by VTIA and NTELOS to convene a hearing and establish certain standards for the provisioning of the nine services specified in 47 C.F.R. § 54.101.⁶ Each applicant is required to provide these nine services to be eligible for ETC designation.

VTIA further comments that "[i]t is not clear how the designation of Virginia Cellular as an ETC will affect the distribution of Universal Funds to the existing carriers in any given rural exchange area." Virginia Cellular replies that this "macroeconomic concern" need not be addressed with this Application. Rather, the Federal Communications Commission ("FCC") and the Federal State Joint Board on Universal Service

⁵ § 214(e)(2) of the Act requires that an ETC designation in areas served by a rural telephone company be based upon a finding that the designation is in the public interest. The Commission did recognize in its November 21, 1997, Order that any carrier seeking ETC designation in a rural area would have the burden of proving that such designation is in the public interest if challenged. Virginia Cellular is seeking ETC designation in the service territories of the following rural telephone companies: Shenandoah Telephone Company ("Shenandoah"), Clifton Forge Waynesboro Telephone Company ("NTELOS"), New Hope Telephone Company, North River Cooperative, Highland Telephone Cooperative, and Mountain Grove-Williamsville Telephone Company ("MGW").

⁶ The nine services required to be offered include: voice grade access to the public switched network; local usage; dual tone multi-frequency signaling or its functional equivalent; single-party service or its functional equivalent; access to emergency services; access to operator services; access to interexchange service; access to directory assistance; and toll limitation for qualifying low-income consumers. Also, the services must be advertised in appropriate media sources. See In Re: Federal-State Joint Board of Universal Service, Report and Order, CC Docket No. 95-45, § 145 (May 8, 1997) ("Universal Service Report & Order").

are reported by Virginia Cellular to be conducting ongoing proceedings to ensure the solvency of the high-cost support fund.⁷ Presumably, VTIA views any public interest served by Virginia Cellular's ETC designation to depend upon whether there would be a consequent diminution of universal service funds.

Virginia Cellular cites the authority of § 214(e)(6) of the Act for this Commission to send Applicant to the FCC for ETC designation if this Commission declines to act on its Application.⁸ In its Reply Comments, Virginia Cellular reports that the "FCC has been actively processing ETC applications on behalf of states which have declined to exercise jurisdiction [over CMRS carriers]. Its internal processing time has been six months, and it has met that timeline in almost all of its proceedings [and] . . . most, if not all of the issues raised by the commenters have been previously addressed by the FCC in its prior orders involving applications for ETC status."⁹

The Commission finds that § 214(e)(6) of the Act is applicable to Virginia Cellular's Application as this Commission has not asserted jurisdiction over CMRS carriers and that the

⁷ Reply Comments at p. 5.

⁸ Pursuant to § 332(c)(3), 47 U.S.C. § 332(c)(3), state regulation of the entry of or the rates charged by any commercial mobile service or any private mobile service is preempted. The Commission has deregulated all Virginia radio common carriers and cellular mobile radio communications carriers. See Final Order issued October 23, 1995, Case No. PUC950062.

⁹ Reply Comments at p. 3.

Applicant should apply to the FCC for ETC designation.¹⁰ The Applicant points out that if Virginia Cellular is designated as an ETC carrier, then the Commission must redefine the service areas of NTELOS and Shenandoah, pursuant to 47 C.F.R.

§ 54.207(c).¹¹ The Applicant has indicated a willingness to propose a plan to redefine these companies' service areas and may submit such a plan with its application to the FCC for ETC designation.

If necessary, this Commission will participate with the FCC and Federal-State Joint Board in redefining the service areas of NTELOS and Shenandoah for "the purpose of determining universal service obligations and support mechanisms." (47 C.F.R.

§ 54.207(a)).¹² Although the FCC will make the final determination on Virginia Cellular's requests, we need to leave this docket open in case there is additional action we must take with respect to defining the service areas of NTELOS and Shenandoah.¹³

¹⁰ The action is similar to that taken by the Commission in Case No. PUC010172 in its August 29, 2001, Order that required cooperatives to certify directly with the FCC.

¹¹ The Commission believes that the service area of MGN does not necessarily need to be redefined if Virginia Cellular is designated as an ETC in that territory. However, if the FCC determines otherwise, the Commission will consider additional action if necessary.

¹² Pursuant to 47 C.F.R. § 54.207(c), if the Applicant proposes to redefine these two companies' service areas, the FCC's procedures require the Commission's agreement on the definitions.

¹³ At this juncture, it is unclear whether the Commission will need to address the redefinitions once disaggregation plans are filed at the FCC pursuant to 47 C.F.R. § 54.315(a).

NOW UPON CONSIDERATION of all the pleadings of record and the applicable law, the Commission is of the opinion that Virginia Cellular should request the FCC to grant the requested ETC designation, pursuant to 47 U.S.C. § 214(e)(6).

Accordingly, IT IS ORDERED THAT Case No. PUC010263 will remain open for further order of the Commission.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: all LECs certified in the Commonwealth of Virginia, as set out in Appendix A of this Order; David A. LaFuria, Esquire, Lukas Nace Gutierrez & Sachs, 1111 Nineteenth Street, N.W., Suite 1200, Washington, D.C. 20036; C. Meade Browder, Jr., Senior Assistant Attorney General, Division of Consumer Counsel, Office of Attorney General, 900 East Main Street, Second Floor, Richmond, Virginia 23219; William F. Caton, Acting Secretary, Federal Communications Commission, Office of the Secretary, 445 12th Street, S.W., Washington, D.C. 20554; and the Commission's Office of General Counsel and Division of Communications.

EXHIBIT 2



FREE PHONE AND FREE SERVICE ACT NOW – LIMITED SUPPLY

Dear Current Resident of Maryland,

You have been selected to receive a special offer for a **FREE wireless phone** and **FREE wireless minutes at NO cost to you**. This special offer requires no contract, no credit check, and no monthly bill. Cintex has been authorized by the Maryland Public Utilities Commission to offer this service which helps people in need receive telephone service.

At no cost to you, Cintex will provide the following service:

- **Free Wireless Phone**
- **Free Monthly Minutes for a Year**
- **Free Caller ID, Call Waiting, Call Forwarding, 3-Way Calling and Voicemail**

To qualify for this program you must participate in **at least one** government program. The government program(s) that qualify you for this special offer are the following:

- Medicaid
- Supplemental Nutrition Assistance Program (SNAP)
- Supplemental Security Income (SSI)
- Temporary Cash Assistance (TCA)
- Electric Universal Service Program (EUSP)
- Medical Assistance (MA)
- Public Assistance to Adults (PAA)
- Temporary Disability Assistance Program (TDAP)
- Maryland Energy Assistance Program (MEAP)

To receive this special offer, follow three simple steps:



Fill out the enclosed application – we've provided an additional form for family or friends that may also qualify.



Sign the application and mail it to Cintex in the enclosed envelope (no postage necessary), or Fax to (301) 761-1625



Wait for your phone.

If you have questions regarding this process or would like additional information, please call 1-800-826-0337 or visit www.CintexWireless.com.